

2) PRC commissioners, as elected, serve as consumer advocates where they create policies on utilities rates, insurance regulation, telecommunication regulation, transportation regulation, etc. based solely on consumer interests and independent of legislative or executive mandates or policies. However, moving to appointed, commissioners will likely serve at the pleasure of the governor's policy initiatives, which at times can be counter to consumer interests.

3) Moving PRC commissioners to appointed can create conflicts of interest. For instance, commissioners, as elected and independent officers, are first and foremost consumer advocates and cannot accept campaign contributions from regulated entities. However, the governor is not constrained by the same requirements, which can create conflicts where regulated entities' interests have special favor with the governor/executive and consequently filtrate down to appointed commissioners.

FISCAL IMPLICATIONS

The bill presents no fiscal impact.

ADMINISTRATIVE IMPLICATIONS

As an agency controlled by separately elected officials, the PRC is an administratively independent part of the executive branch. Having governor-appointed commissioners would administratively place the PRC within the governor's portion of the executive branch.

TECHNICAL ISSUES

The bill does not provide for an effective date. However, if passed by the Legislature during this session and ratified by the voters at the next general election (i.e., the one scheduled for November 2004), it would apparently be self-executing and have immediate effect. If so, would the governor be able to make appointments to the commission immediately upon voter approval, or would he have to await the expiration of current commissioner terms?

By declaring that commission terms would begin on January 1 of the year following their appointment, the bill could have the effect of creating terms as long as five years, depending on the time of appointment. For example, if a commissioner were appointed on January 2, his or her term would not begin until the following January 1, thereby granting an additional year to that commissioner's term. The bill also appears to leave open the question of when an interim appointment might take effect.

The term "regulatory law and affairs" is not defined. It could be interpreted to mean that commissioners must have some kind of legal background or training. If the intention is to attract and appoint commissioners with more diverse regulatory backgrounds, this term could be revised by, for example, substituting "issues" for "law."

If the voters approve the constitutional amendment, the Legislature will subsequently have to repeal the existing laws governing commissioner elections.

OTHER SUBSTANTIVE ISSUES

1) Other appointments to constitutional commissions (i.e. university regents) have language in the text explaining: (a) on what grounds a commissioner can be removed; (b) whether a commissioner can serve until their replacement is confirmed by the Senate; and (c) political diversity. These items aren't required, but help explain how to resolve disputed situations.

2) The language is not expressly clear that the existing commissioners will no longer serve after December 31st.

3) It is difficult to determine if policymaking from the PRC will improve from moving from elected to appointed commissioners. The primary objective of the PRC is to balance industry interests with consumer interest and in the end protecting consumers from paying unnecessary expenses. It is unclear if the ratemaking process will work better.

POSSIBLE QUESTIONS

- Would governor-appointed commissioners be more accountable to the people of New Mexico than elected commissioners?
- Will moving to appointed commissioners induce more cooperation and professionalism among the commission as a whole?
- Should commissioners be appointed from districts instead of at-large?
- The bill neither provides for nor prohibits the removal of appointed commissioners for cause. Should appointed commissioners be expressly subject to removal for cause?
- Should appointed commissioners be term-limited?
- Are the express qualifications for appointed commissioners appropriate?

DG/yr:njw